

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2221

**Introduced by Assembly Member Vargas
(Principal coauthor: Assembly Member Richman)**

February 22, 2006

An act to *amend Section 17213 of, and to add Sections 17072.11 and 35276 to the Education Code, relating to school facilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2221, as amended, Vargas. School projects: designation of site: requirements.

(1) Existing provisions of the California Constitution authorize a school district to incur bonded indebtedness in the form of general obligation bonds for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing or equipping of school facilities, or the acquisition or lease of real property for school facilities, upon the approval of 55% of the voters of the district or county, as appropriate, voting on the proposition at an election.

Existing law requires, if a bond measure authorized pursuant to the above provisions of the California Constitution is approved, that the governing board of the school district establish and appoint members to an independent citizens' oversight committee, as specified. Existing law specifies that the purpose of the citizens' oversight committee is to inform the public concerning the expenditure of bond revenues.

Existing law, the Leroy F. Greene School Facilities Act of 1998 (the Greene Act), requires the State Allocation Board to allocate to applicant school districts, prescribed per-unhoused-pupil state funding for construction and modernization of school facilities, including

hardship funding, and supplemental funding for site development and acquisition.

This bill would require the governing board of a school district, prior to designating a preferred site for a new school project under the Greene Act, to prepare a report demonstrating that no alternative site owned by the school district is available, or that the school district plans to sell an available site in order to use the proceeds of the sale for the purchase of the new site, as specified.

This bill would also prohibit the governing board of a school district from designating a preferred site for a new school project under the provisions specified above until it has made specified finding and obtained the approval of the citizens' oversight committee, if any, and the State Department of Education.

(2) Existing law sets forth various requirements regarding the siting, structural integrity, safety, and fitness-for-occupancy of school buildings, including, but not limited to, a prohibition of the approval by the governing board of a school district of the acquisition of a schoolsite by a school district, unless prescribed conditions relating to, among others, possible exposure to hazardous substances are satisfied, and a prohibition on the approval of a related environmental impact report or negative declaration. Existing law exempts from the above conditions that prohibit approval, a natural gas pipeline that is used solely for the purpose of supplying natural gas to the school or neighborhood.

This bill would remove that exemption for natural gas pipelines. The bill would also add to the list of property conditions, property that is, or is adjacent to property, formerly or currently owned by the military. The bill would require a school district to produce a report and adopt written findings, as specified.

(3) Existing law authorizes the governing board of a school district to acquire by eminent domain any property necessary to carry out any of the powers or functions of the district. Existing law also requires the governing board of a school district to meet with appropriate local government recreation and park authorities to review all possible methods of coordinating planning, design, and construction of new school facilities and schoolsites or major additions to existing school facilities and recreation and park facilities in the community.

This bill would require the governing board of a school district, prior to designating a preferred site for a new school project, to identify opportunities for joint use of the site by meeting with all

appropriate local governmental agencies, including college district and recreation and park authorities, to review all possible methods of coordinating planning, design, and construction of the new school project with facilities and sites already owned by public agencies. The bill would prohibit the governing board from selecting or designating a proposed site as a preferred site for a new school project unless the governing board finds, as specified, that the site may be used as a joint-use site. This bill would also prohibit the governing board of a school district from designating a preferred site for a new school project under the provisions specified above until it has obtained the approval of the citizens' oversight committee, if any, and the State Department of Education, as specified. The bill would require the governing board to prepare a report based on the above requirements. By imposing these requirements, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17072.11 is added to the Education
2 Code, to read:
3 17072.11. (a) (1) The Legislature finds and declares that it is
4 the policy of the State of California that land, public resources,
5 and public funds be used wisely and efficiently.
6 (2) It is the intent of the Legislature to ensure that school
7 districts use as sites for new school projects land that is already
8 owned by the school district, where feasible.
9 (b) (1) Prior to designating a preferred site for a new school
10 project under this chapter, the governing board of a school
11 district shall prepare a report demonstrating that no alternative
12 site owned by the school district is available for this purpose, or

1 that the school district plans to sell an available site in order to
2 use the proceeds of the sale for the purchase of the new site. The
3 governing board shall not designate a preferred site for a new
4 school project until it has obtained the approval of the citizens'
5 oversight committee, if any, and the State Department of
6 Education, as specified in this section.

7 (2) The governing board may not select a site as a preferred
8 site unless that site is owned by the school district or unless the
9 governing board makes a finding that there is substantial
10 evidence, based on the entire administrative record, that no
11 alternative site owned by the school district is available for use as
12 the site or, if an alternative site owned by the school district is
13 available for use as the site, that the school district plans to sell
14 an available site and will use the proceeds of that sale for the
15 purchase of the new site.

16 (3) The report shall be certified by the governing board of the
17 school district.

18 (4) (A) The governing board shall submit the report to the
19 citizens' oversight committee, if any, established pursuant to
20 Section 15278, for review and consideration by that committee.
21 The committee shall, in its discretion, approve or disapprove the
22 report. If the report is approved by the committee, the governing
23 board shall submit the report to the State Department of
24 Education.

25 (B) If the committee disapproves the report, the governing
26 board may not submit the report to the State Department of
27 Education.

28 (C) In order to obtain approval of the report from the
29 committee after the committee has disapproved the report, the
30 school district may take further action, as directed by the
31 committee, to use as a preferred site land that is already owned
32 by the school district, and may resubmit the report with the new
33 information. The governing board shall not submit the report to
34 the State Department of Education unless the committee
35 approves the report.

36 (c) (1) Subject to paragraph (2), the State Department of
37 Education shall independently review the report and shall, in its
38 discretion, approve or disapprove the report.

39 (2) The State Department of Education shall not approve the
40 report unless the State Department of Education makes a finding

1 that there is substantial evidence, based on the entire
2 administrative record, that no alternative site owned by the
3 school district is available for use as the site or, if an alternative
4 site owned by the school district is available for use as the site,
5 that the school district plans to sell an available site and will use
6 the proceeds of that sale for the purchase of the new site.

7 *SEC. 2. Section 17213 of the Education Code is amended to*
8 *read:*

9 17213. The governing board of a school district may not
10 approve a project involving the acquisition of a schoolsite by a
11 school district, unless all of the following occur:

12 (a) The school district, as the lead agency, as defined in
13 Section 21067 of the Public Resources Code, determines that the
14 property purchased or to be built upon is not any of the
15 following:

16 (1) The site of a current or former hazardous waste disposal
17 site or solid waste disposal site, unless if the site was a former
18 solid waste disposal site, the governing board of the school
19 district concludes that the wastes have been removed.

20 (2) A hazardous substance release site identified by the
21 Department of Toxic Substances Control in a current list adopted
22 pursuant to Section 25356 of the Health and Safety Code for
23 removal or remedial action pursuant to Chapter 6.8 (commencing
24 with Section 25300) of Division 20 of the Health and Safety
25 Code.

26 (3) A site that contains one or more pipelines, situated
27 underground or aboveground, that carries hazardous substances,
28 acutely hazardous materials, or hazardous wastes, ~~unless the~~
29 ~~pipeline is including a natural gas line that is used only to supply~~
30 ~~natural gas to that school or neighborhood.~~

31 (b) *The school district, as the lead agency, as defined in*
32 *Section 21067 of the Public Resources Code, determines that the*
33 *property purchased or to be built upon, or adjacent to, is not*
34 *property currently or formerly owned or operated by the*
35 *military.*

36 ~~(b)~~

37 (c) The school district, as the lead agency, as defined in
38 Section 21067 of the Public Resources Code, in preparing the
39 environmental impact report or negative declaration has
40 consulted with the administering agency in which the proposed

1 schoolsite is located, pursuant to Section 2735.3 of Title 19 of the
2 California Code of Regulations, and with any air pollution
3 control district or air quality management district having
4 jurisdiction in the area, to identify both permitted and
5 nonpermitted facilities within that district's authority, including,
6 but not limited to, freeways and other busy traffic corridors, large
7 agricultural operations, and railyards, within one-fourth of a mile
8 of the proposed schoolsite, that might reasonably be anticipated
9 to emit hazardous air emissions, or to handle hazardous or
10 acutely hazardous materials, substances, or waste. The school
11 district, as the lead agency, shall include a list of the locations for
12 which information is sought.

13 ~~(e)~~—

14 (d) The governing board of the school district makes one of
15 the following written findings:

16 (1) Consultation identified none of the facilities or significant
17 pollution sources specified in subdivision ~~(b)~~ (c).

18 (2) The facilities or other pollution sources specified in
19 subdivision ~~(b)~~ (c) exist, but one of the following conditions
20 applies:

21 (A) The health risks from the facilities or other pollution
22 sources do not and will not constitute an actual or potential
23 endangerment of public health to persons who would attend or be
24 employed at the school.

25 (B) The governing board finds that corrective measures
26 required under an existing order by another governmental entity
27 that has jurisdiction over the facilities or other pollution sources
28 will, before the school is occupied, result in the mitigation of all
29 chronic or accidental hazardous air emissions to levels that do
30 not constitute an actual or potential endangerment of public
31 health to persons who would attend or be employed at the
32 proposed school. If the governing board makes this finding, the
33 governing board shall also make a subsequent finding, prior to
34 the occupancy of the school, that the emissions have been
35 mitigated to these levels.

36 (C) For a schoolsite with a boundary that is within 500 feet of
37 the edge of the closest traffic lane of a freeway or other busy
38 traffic corridor, the governing board of the school district
39 determines, through analysis pursuant to paragraph (2) of
40 subdivision (b) of Section 44360 of the Health and Safety Code,

1 based on appropriate air dispersion modeling, and after
2 considering any potential mitigation measures, that the air quality
3 at the proposed site is such that neither short-term nor long-term
4 exposure poses significant health risks to pupils.

5 (D) The governing board finds that neither of the conditions
6 set forth in subparagraph (B) or (C) can be met, and the school
7 district is unable to locate an alternative site that is suitable due
8 to a severe shortage of sites that meet the requirements in
9 subdivision (a) of Section 17213. If the governing board makes
10 this finding, the governing board shall adopt a statement of
11 Overriding Considerations pursuant to Section 15093 of Title 14
12 of the California Code of Regulations.

13 *(e) If any one or more of the property conditions listed in*
14 *paragraphs (1) to (3), inclusive, of subdivision (a) of this section,*
15 *subdivision (b) of this section, or subdivision (a) of Section*
16 *17215 exist, a school district shall produce a report and adopt*
17 *written findings as follows:*

18 *(1) The school district shall produce a report at a regularly*
19 *scheduled or special public meeting and adopt written findings*
20 *as follows:*

21 *(A) The safety and health of children, teachers,*
22 *administrators, and others will not be placed at risk.*

23 *(B) If the school district owns land within four miles of the*
24 *proposed site, that it is not feasible to utilize the currently owned*
25 *land for the needs of the project being considered.*

26 *(C) The school district has investigated the potential for*
27 *public-private partnerships between itself and private developers*
28 *or landowners, where appropriate.*

29 *(D) The school district has investigated the potential for*
30 *joint-use opportunities within four miles of the proposed site,*
31 *including land and facilities owned by the state, local*
32 *government, college districts, and recreation and park*
33 *authorities.*

34 *(2) Prior to designating a preferred site, the school district*
35 *shall submit the report and adopted findings to the State*
36 *Department of Education and State Allocation Board.*

37 *(3) If a school district has physically commenced construction*
38 *of a school facility, the school district shall be exempt from the*
39 *requirements of paragraph (2).*

40 ~~(d)~~

1 (f) As used in this section:

2 (1) “Hazardous air emissions” means emissions into the
3 ambient air of air contaminants that have been identified as a
4 toxic air contaminant by the State Air Resources Board or by the
5 air pollution control officer for the jurisdiction in which the
6 project is located. As determined by the air pollution control
7 officer, hazardous air emissions also means emissions into the
8 ambient air from any substance identified in subdivisions (a) to
9 (f), inclusive, of Section 44321 of the Health and Safety Code.

10 (2) “Hazardous substance” means any substance defined in
11 Section 25316 of the Health and Safety Code.

12 (3) “Acutely hazardous material” means any material defined
13 pursuant to subdivision (a) of Section 25532 of the Health and
14 Safety Code.

15 (4) “Hazardous waste” means any waste defined in Section
16 25117 of the Health and Safety Code.

17 (5) “Hazardous waste disposal site” means any site defined in
18 Section 25114 of the Health and Safety Code.

19 (6) “Administering agency” means any agency designated
20 pursuant to Section 25502 of the Health and Safety Code.

21 (7) “Handle” means handle as defined in Article 1
22 (commencing with Section 25500) of Chapter 6.95 of Division
23 20 of the Health and Safety Code.

24 (8) “Facilities” means any source with a potential to use,
25 generate, emit or discharge hazardous air pollutants, including,
26 but not limited to, pollutants that meet the definition of a
27 hazardous substance, and whose process or operation is identified
28 as an emission source pursuant to the most recent list of source
29 categories published by the California Air Resources Board.

30 (9) “Freeway or other busy traffic corridors” means those
31 roadways that, on an average day, have traffic in excess of
32 50,000 vehicles in a rural area as defined in Section 50101 of the
33 Health and Safety Code, and 100,000 vehicles in an urban area,
34 as defined in Section 50104.7 of the Health and Safety Code.

35 ~~SEC. 2.~~

36 *SEC. 3.* Section 35276 is added to the Education Code, to
37 read:

38 35276. (a) The Legislature finds and declares that it is the
39 policy of the State of California that land, public resources, and
40 public funds be used wisely and efficiently.

1 (b) It is the intent of the Legislature to ensure that governing
2 boards of school districts explore possibilities for joint use of
3 new school projects, and that new school projects be used as
4 joint-use facilities whenever feasible.

5 (c) (1) Prior to designating a preferred site for a new school
6 project, the governing board of a school district shall comply
7 with the requirements of this section, and shall obtain the
8 approval of the citizens' oversight committee, if any, as specified
9 in subdivision (d), and the approval of the department, as
10 specified in subdivision (e).

11 (2) The governing board shall identify opportunities for joint
12 use of the site by meeting with all appropriate local governmental
13 agencies, including college district and recreation and park
14 authorities, to review all possible methods of coordinating
15 planning, design, and construction of the new school project with
16 facilities and sites already owned by public agencies.

17 (3) The governing board may not select or designate a
18 proposed site as a preferred site for a new school project unless
19 that site may be used as a joint-use site or unless the governing
20 board makes a finding that there is substantial evidence, based on
21 the entire administrative record developed pursuant to this
22 subdivision, that joint-use opportunities are infeasible for that
23 site.

24 (4) The governing board shall prepare a report for approval
25 pursuant to subdivisions (d) and (e) that describes both of the
26 following:

27 (A) The opportunities for joint use that were identified for the
28 new school project.

29 (B) The efforts of the school district to meet with all
30 appropriate local governmental agencies, including college
31 district and recreation and park authorities, to review all possible
32 methods of coordinating planning, design, and construction of
33 the new school project with facilities and sites already owned by
34 public agencies.

35 (d) (1) The governing board shall submit the report to the
36 citizens' oversight committee, if any, established pursuant to
37 Section 15278, for review and consideration by that committee.
38 The committee shall, in its discretion, approve or disapprove the
39 report. If the report is approved by the committee, the governing
40 board shall submit the report to the department.

1 (2) If the committee disapproves the report, the governing
2 board may not submit the report to the department.

3 (3) In order to obtain approval of the report from the
4 committee after the committee has disapproved the report, the
5 school district may take further action, as directed by the
6 committee, to use as a preferred site land that is already owned
7 by the school district, and may resubmit the report with the new
8 information. The governing board shall not submit the report to
9 the department unless the committee approves the report.

10 (e) (1) Subject to paragraph (2), the department shall
11 independently review and approve or disapprove the report
12 described in paragraph (4) of subdivision (c).

13 (2) The department shall not approve the report unless the
14 department makes a finding that the site may be used as a
15 joint-use site or that there is substantial evidence, based on the
16 entire administrative record, that joint-use opportunities are
17 infeasible for that site.

18 SEC. 3. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.